IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 30358 of 2005(L)

AGAINST THE ORDER DATED 6/4/05 IN IA 1800/05 IN OS.299/2005 of PRL.SUB COURT,THRISSUR

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PETITIONER:

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1. K.P.NATARAJAN, USHUS,
   VAYALAR VILLAGE, CHERTHALA TALUK,
   ALAPPUZHA DISTRICT.

2. USHA NATARAJAN,
   W/O.1ST PETITIONER K.P.NATARAJAN, DO.

BY ADV. SRI.A.N.RAJAN BABU

RESPONDENTS:

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1. N.M. MINERALS INDIA (P) LTD.,
   MANNUTHY REP. BY ITS MANAGING DIRECTOR,
   S/O.MADHAVAN NAIR, 1ST FLOOR, BUILDING NO.762,
   INDIRA NAGAR, BANGALORE.

2. N.M.MINERALS INDIA (P) LTD.,
   MANNUTHY, REP. BY ITS MANAGING DIRECTOR,
   BALAKRISHNAN NAIR, MANNUTHY, THRICHUR.

BY ADV. SRI.C.CHANDRASEKHARAN
SRI.K.C.VISWAMBHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.30358/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT

EXT.P2 – TRUE COPY OF IA.1800/05 IN OS.299/05

EXT.P3 – TRUE COPY OF CR.STATEMENT IN I.A.1800/05

EXT.P4 - TRUE COPY OF ORDER DT.6.4.05 IN IA.1800/05

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.30358 OF 2005

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DATED THIS THE 24th JULY, 2007

J U D G M E N T

In this Writ Petition under Article 227 of the Constitution, the petitioners who are plaintiffs in a suit for money and petitioners in an application for attachment of immovable property impugn Ext.P4 order of the learned Sub Judge dismissing the application for attachment. Several contentions were raised by the respondents-defendants through Ext.P3 objections which they had filed to the attachment application. It is in paragraph 6 of Ext.P3 that the respondents answer the allegation of the petitioner that with the objective of defeating and delaying execution of the decree which may be passed, the respondents are about to alienate the property. Para.6 of Ext.P3 reads as follows:-

> "These respondents have no intention to dispose of the petition-schedule properties. These respondents have not entered into any agreement and have not conducted any negotiation with Sri.Viddyadharan, S/o.Kakkanattu Saraswathy Amma regarding sale of the petition schedule properties. The abovesaid person as

well as Sasi, S/o.Kuttappan are unknown to these respondents. The allegations contra are hence denied."

The learned Subordinate Judge under the impugned order noticed the averments in para.6 and the circumstance that the properties in question are already mortgaged in favour of the Federal Bank and found that the apprehension of the petitioner that the respondents will dispose of the property with the objective of defeating and delaying execution of the decree is not well founded.

2. The distinction between orders of attachment which are passed under Order XXXVIII Rule 5 C.P.C. on the original side and those passed in execution under Rule 54 of Order XXI is well known. The object of attachments before judgment which are issued under Order XXXVIII Rule 5 is only to assure the plaintiff that in the event of his obtaining a positive decree, he will be able to realise the fruits of the decree. Order of attachment under Order XXXVIII Rule 5 gives some sort of guarantee to the plaintiff-creditor that he will not be without assets for being proceeded against, if and when he gets a decree. That is why all attachment orders passed under Order XXXVIII Rule 5 are liable to be vacated once security is furnished. The same is not the position under Order XXI Rule 54 where there is no question of

attachment orders being vacated on the judgment-debtor furnishing security and the attachment itself is an important step in execution.

3. In the instant case, the assurance of the respondents through their counter-statement Ext.P3, the circumstance noticed by the court that the properties were already under mortgage to the Federal Bank and the possibility of the respondents alienating the properties being remote were all very relevant. Before me also Sri.C.Chandrasekharan, counsel for the respondents would reiterate the undertaking of the respondents in the court below that they will not further alienate the properties in question till the suit is disposed of. I record the above submission.

The challenge against Ext.P4 fails. However, the Writ Petition is disposed of with a direction to the court below to give priority to the suit and dispose of the same at the earliest and at any rate within four months of receiving copy of this judgment. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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